

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**WELLS FARGO BANK, N.A.,**

**Plaintiff,**

**v.**

**CHRISTOPHER A. ASKINS, et al.,**

**Defendants.**

**No. 10-0863-DRH**

**ORDER**

**HERNDON, Chief Judge:**

Now before the Court are the government's motion to strike affidavit of Crystal Reyes (Doc. 36) and request to defer consideration of plaintiff's motion for summary judgment (Doc. 37). As to the motion to strike, the government argues that plaintiff failed and neglected to disclose the existence and identity of Crystal Reyes, its sole witness in this matter, in violation of the requirements of Rule 26 and that it was prejudice by the inability to depose Reyes. Further, the government contends that Reyes's affidavit establishes that she lacks the requisite knowledge sufficient to support plaintiff's summary judgment motion. Plaintiff opposes the motions arguing that the government's requests are unrelated to the single undisputed legal principal presented in its motion for summary judgment: the legal priority of plaintiff's first filed lien over the government's \$6,319.04 lien. Plaintiff further argues that there is no "discoverable information" that the government could obtain from Reyes that is necessary or relevant to the motion for summary judgment. The Court agrees with

the government.

Based a review of the pleadings, it is clear that the government raises a legitimate question about Reyes who plaintiff relies for the facts to support its motion for summary judgment. Further, it is clear that plaintiff failed to disclose Reyes as a witness. Thus, the Court **GRANTS** the motion to strike (Doc. 36); **DENIES as moot** the motion to defer ruling on plaintiff's motion for summary judgment (Doc. 37); and **DENIES at this time with leave to re-file** plaintiff's motion for summary judgment (Doc. 33). Thus, the Court **STRIKES** the Reyes' affidavit (Doc. 34-1). Further, Court **DIRECTS** Magistrate Judge Frazier to reopen discovery and enter a new scheduling and discovery order.

**IT IS SO ORDERED.**

Signed this 26th day of October, 2011.

  
Digitally signed by David R. Herndon  
Date: 2011.10.26 14:56:33 -05'00'

**Chief Judge  
United States District Court**